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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 50325-0511

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on ___January 18, 2006___ Signature _Angelica Maloney_ Typed or printed name ___Angelica Maloney___	Application Number 09/774,906	Filed January 30, 2001
	First Named Inventor Shahrokh Sadjadi	
	Art Unit 2143	Examiner Alina A. Boutah

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number ___45,620___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

_____
Signature
Christopher J. Brokaw

_____
Typed or printed name

___408-414-1225___
Telephone number

January 18, 2006
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of __2__ forms are submitted.

REMARKS

As will be seen from the discussion below, there are (a) clear errors of fact and (b) omissions of elements essential for a *prima facie* case in the Examiner's rejections of Claims 8-30, 32-35, 37-40, and 42-44.

Issue 1

The position of the Office Action equates the client of *Soltis* with a local lock manager as claimed. For example, the Office Action states:

> The plurality of clients, in this case, is interpreted as plurality [sic] of lock manager process since they have control access to the resource

(Page 12 of the Office Action). This is a clear error of fact.

A client cannot be analogous to a local lock manager because a lock manager **grants** a lock on a resource, while a client **requests** a lock on a resource.

As featured in Claim 8, each of a plurality of local lock manager processes may grant a lock on the same resource. For example, Claim 8 recites:

> providing a distributed lock manager process comprising a plurality of
> local lock manager processes executing on a corresponding
> plurality of hosts,
> wherein <u>each of the plurality of local lock manager processes may grant a
> lock on the same resource</u>

The Office Action's assertion that the plurality of local lock managers, in the above element, is shown by a reference that merely discusses a plurality of clients that may each request a lock on the same resource, is a clear error of fact.

Requesting a lock on a resource cannot be interpreted so broadly as to be analogous to granting a lock on a resource. In fact, *Soltis* clearly teaches a client <u>requests</u> a lock (denoted a device lock) from another entity that <u>grants</u> the lock, namely the storage device implementing the lock. For example, *Soltis* teaches that a client 105 requests a device lock from a particular storage device of Network Storage Pool 400, a device lock is implemented by a single storage device, and each device lock gives a single client 105 access to one or more blocks at the single storage device implementing the device lock (See Col. 3, lines 41-44; Col. 9, lines 52-59).

Consequently, the Examiner's assertion that the local lock manager of Claim 8 may be rejected on a reference that merely discusses one or more entities that each may

request a lock on the same resource is a clear error in fact. A colorable explanation for how the cited art shows the above-quoted element, essential for a *prima facie* rejection of Claim 8, is missing in the Examiner's rejections.

As each of Claims 9-30, 32-35, 37-40, and 42-44 (a) recite at least one element that also features a local lock manager, and (b) is rejected on the same grounds as Claim 8, the Examiner's rejection as to each of Claims 9-30, 32-35, 37-40, and 42-44 are also based on clear error in fact and lack an element essential for a *prima facie* rejection.

Issue 2

The rejection of the pending claims based on 35 U.S.C. § 103(a) lacks an element essential for a *prima facie* case. In particular, the motivation to combine *Troxel* with *Soltis*, supplied by the Office Action, is incorrect. The portion of *Soltis* cited to show a motivation to combine the references (Col. 3, lines 41-45) is in the background of *Soltis*. This portion (a) fails to identify the approach of *Troxel* and (b) fails to identify the approach of *Soltis*. The portion also fails to describe equivalent approaches of others, and has no suggestion to combine such approaches to arrive at the claims. Since neither the approach of *Troxel* nor the approach of *Soltis* is discussed in the cited portion, this portion cannot possibly provide a proper motivation to combine *Troxel* with *Soltis*. Consequently, a *primia facie* case to support a 35 U.S.C. § 103(a) rejection to each pending claim has not been made by the Office Action.

For at least the above reasons, Applicants request that the rejections of all the pending claims based on the improper combination of *Troxel* and *Soltis* be reversed.